

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

**AMAZON'S MOTION TO SEAL
PLAINTIFFS' MOTION TO COMPEL
BRIEFING AND EXHIBITS**

NOTE ON MOTION CALENDAR:
December 31, 2024

Pursuant to Local Civil Rule 5(g) and § 5.6 of the Protective Order, Dkt. No. 160, as well as the Court's Order Regarding Sealing Issues, Dkt. No. 320, and the Stipulated Motion and Order Extending Deadlines, Dkt. No. 323, Defendant Amazon.com, Inc. respectfully submits this motion to permanently seal Exhibits D, E, F, G, I, L, M, and N to Plaintiffs' Motion to Compel ("Motion"), Dkt. No. 331, and Exhibit A to Plaintiffs' Reply, Dkt. No. 361.¹ Amazon also respectfully requests that the Court keep sealed the redactions in Plaintiffs' Motion, Exhibits B, C, H, J, and O to Plaintiffs' Motion, Amazon's Opposition to the Motion to Compel ("Opposition"), Dkt. 347, Declaration of Katherine A. Trefz in support of Amazon's Opposition ("Trefz Decl."), and Plaintiffs' Reply. With respect to Exhibit A to Plaintiffs' Motion, which was provisionally filed

¹ The exhibits discussed in this Motion were attached to the Declaration of Michael Baker in Support of Plaintiffs' Motion to Compel, Dkt. 332, and the Declaration of Michael Baker in Support of Plaintiffs' Reply, Dkt. 362. For ease, Amazon refers to these exhibits as being attached to Plaintiffs' Motion and Reply, respectively.

under seal, Amazon requests that certain information continue to be redacted. These documents contain sensitive business and personal information designated as confidential under the Protective Order. Disclosing the material would injure Amazon or its non-party employees, and less restrictive alternatives to sealing would not be sufficient to prevent that harm.

BACKGROUND

On October 28, 2024, the Court granted the parties' Stipulated Motion Regarding Sealing Issues, ordering an omnibus motion on sealing within fourteen days of completed briefing on a motion to compel. On November 5, 2024, Plaintiffs filed their Motion to Compel Production of Documents, which attached several confidential Amazon business documents that had been produced during the FTC's pre-Complaint investigation, and reproduced here, as well as correspondence between counsel for Amazon and counsel for Plaintiffs. Through the parties' conferral, Amazon identified certain confidential information appropriate for sealing and opted for redaction where possible. On November 20, 2024, Amazon filed its Opposition to Plaintiffs' Motion to Compel, also under seal. Plaintiffs filed their Reply on November 26, 2024.

The Motion to Compel briefing and several supporting exhibits and declarations discuss material that Amazon has designated as confidential or highly confidential. *See* Declaration of Lee Roach in Support of the Motion to Seal ("Roach Decl.") (describing the confidential information contained within the exhibits). For the good cause of avoiding harm to Amazon or its employees, the Court should order the following relief:

Document (Dkt. #)	Pincite if relevant	Description of Confidential Material Sought to be Sealed	Requested Treatment
Plaintiffs' Motion (Dkt. 331)	Pgs. 3-5, 10-11, 13-14	Information regarding internal Amazon databases related to personnel files, the identity and evaluation of specific Amazon employees, and foreign investigation into and regulation of Amazon	Amazon requests continued redaction of the confidential information on Pgs. 3-5, 10-11, and 13-14.

Document (Dkt. #)	Pincite if relevant	Description of Confidential Material Sought to be Sealed	Requested Treatment
Exhibit A to the Motion (Dkt. 332-01)	Pgs. 2-3	Information regarding the identity and organization of Amazon's business units	This document was provisionally sealed in its entirety. Amazon requests that a redacted version be filed redacting the information about business units and organization on Pgs. 2-3.
Exhibit B to the Motion (Dkt. 332-02)	Pgs. 3-4	Information identifying specific internal Amazon emails, databases, and tools, as well as contemplated business changes	Amazon requests continued redaction of the confidential information on Pg. 3 and 4.
Exhibit C to the Motion (Dkt. 332-03)	Pgs. 2-3	Information regarding the identity and organization of Amazon's business units, including personal employee information and confidential investigation information	Amazon requests continued redaction of the confidential information on Pg. 2 and 3.
Exhibit D to the Motion (Dkt. 332-04)		Information regarding Amazon's internal data organization	Amazon requests that this document remain under seal, without filing a public version.
Exhibit E, F, G to the Motion (Dkt. 332-05, 06, 07)		Personnel review files and evaluations of Amazon employees	Amazon requests that these documents remain under seal, without filing public versions.
Exhibit H to the Motion (Dkt. 332-08)	Pgs. 1-2	Information regarding the identity and data of Amazon employees	Amazon requests continued redactions of the confidential information on Pg. 1 and 2.
Exhibit I to the Motion (Dkt. 332-9)		Information regarding foreign investigation into and regulation of Amazon	Amazon requests that this document remain under seal, without filing a public version.
Exhibit J to the Motion (Dkt. 332-10)	Pg. 3	Information regarding foreign investigation into and regulation of Amazon	Amazon requests continued redactions of the confidential information on Pg. 3.

Document (Dkt. #)	Pincite if relevant	Description of Confidential Material Sought to be Sealed	Requested Treatment
Exhibit L to the Motion (Dkt. 332-12)		Information regarding Amazon's pricing and search algorithms	Amazon requests that this document remain under seal, without filing a public version.
Exhibit M to the Motion (Dkt. 332-13)		Information regarding Amazon's business goals and strategies on international seller services	Amazon requests that this document remain under seal, without filing a public version.
Exhibit N to the Motion (Dkt. 332-14)		Information regarding foreign investigation into Amazon	Amazon requests that this document remain under seal, without filing a public version.
Exhibit O to Motion (Dkt. 332-15)	¶1, ¶3, ¶4, ¶6, ¶7, ¶14, ¶15, ¶16	Information regarding the identity and organization of Amazon's business units, including the identity and personal information of specific employees	Amazon requests continued redactions of the confidential information in ¶1, ¶3, ¶4, ¶6, ¶7, ¶14, ¶15, and ¶16 of this email
Amazon's Opposition (Dkt. 347)	Pgs. 3, 6, 13	Information regarding the identity and data of Amazon employees, as well as details of the parties' discovery negotiations	Amazon requests continued redaction of lines 2-4 of Pg. 3, lines 10-12 of Pg. 6 and lines 24-25 of Pg. 12.
K. Trefz Decl. (Dkt. 351)	¶3, ¶5, ¶6, ¶7, ¶8	Information regarding the identity and data of Amazon employees, as well as confidential details of the parties' discovery negotiations	Amazon requests continued redaction of the sections from ¶3, ¶5, ¶6, ¶7, and ¶8.
Plaintiffs' Reply (Dkt. 361)	Pgs. 2-3	Information regarding Amazon's evaluation of its own employees and its guidelines on promotion	Amazon requests continued redaction of lines 19-21 of Pg. 2, and lines 1-4 and 6-13 of Pg. 3.
Exhibit A to the Reply (Dkt. 362-01)		Information regarding Amazon's evaluation of its own employees and its guidelines on promotion	Amazon requests that this document remain under seal, without filing public versions.

ARGUMENT

These documents should remain sealed or redacted because they contain either highly sensitive commercial information in the competitive retail environment, or contain the personal information of Amazon employees. *See generally* Roach Decl.

A. The Good Cause Standard Applies To This Motion.

Pursuant to Rule 26(c), a party need only show “good cause” to seal material attached to a nondispositive motion like Plaintiffs’ Motion and Amazon’s Opposition. *See Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). “[T]he public interest in accessing nondispositive motions is not as strong as dispositive motions . . . because nondispositive motions are often unrelated, or only tangentially related, to the underlying cause of action.” *Id.* at 1098 (cleaned up); *see also Bennett v. Homesite Ins. Co.*, 2023 WL 255958, at *2 (W.D. Wash. Jan. 18, 2023) (applying good cause standard to seal motion to compel and supporting declaration). A protective order such as sealing is appropriate to ensure “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way,” as well as “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c); *see also Bold Ltd. v. Rocket Resume, Inc.*, 2024 WL 54692, at *2 (N.D. Cal. Jan. 4, 2024) (“Good cause exists to seal confidential business information, including non-public information about a company’s business strategy, business transactions, and corporate structure.” (citation omitted)).

B. There Is Good Cause To Seal and Redact Portions of the Briefing and Selected Exhibits to Plaintiffs’ Motion.

Amazon requests that Exhibits D, E, F, G, L, M, and N of the Motion and Exhibit A of the Reply be sealed in full. Exhibits D, L, and M to the Motion contain confidential business, strategic, and litigation-related documents that would cause competitive harm to Amazon if released. *See* Roach Decl. ¶¶ 5, 7. Information such as how Amazon keeps its data, how it structures its business internally, its strategy documents, and information about its pricing algorithms constitute Amazon

business secrets. The publication of this information gives competitors insight into how Amazon structures its teams and data, what projects it undertakes, as well as the specific goals it pursues and steps it develops to progress towards those goals. To require disclosure of this information would effectively give Amazon's competitors access to information that the antitrust laws prohibit Amazon from sharing with them voluntarily. Further, Exhibits E, F, and G to the Motion contain confidential, personal information regarding several Amazon employees. *See* Roach Decl. ¶ 6. Releasing the personnel files for individual, non-party Amazon employees would make public these employees' private information, and could potentially subject these individuals and those who evaluated them to embarrassment or harassment. Exhibit N to the Motion is correspondence from a foreign regulator and contains specific information about ongoing and past foreign investigations. *See* Roach Decl. ¶ 8. This information is protected by foreign confidentiality laws and could jeopardize present or future investigations. And then, Exhibit A to the Reply is an internal Amazon guide to employee evaluation and promotions. *See* Roach Decl. ¶ 7. Disclosure of this information would provide to Amazon's competitors considerable insight into what Amazon values in employees and its employment considerations, and would cause Amazon competitive harm. *Id.*

Amazon also requests that the Court keep redacted the sealed language in Plaintiffs' Motion, Exhibits B, C, H, J and O to the Motion, Amazon's Opposition, the K. Trefz Declaration, and Plaintiffs' Reply, and with respect to Exhibit A, which was provisionally filed under seal, Amazon requests that certain information continue to be redacted. These redactions discuss the other exhibits at issue here and are confidential for the same reasons: they reflect Amazon's confidential and proprietary business information and strategies, disclosure of which could harm Amazon to the betterment of its competitors; private, personal information of specific Amazon employees; and confidential information about foreign investigations that is kept confidential in the ordinary course. *See* Roach Decl. ¶¶ 9-11. Exhibits B, C, H, O, the K. Trefz Declaration, and Amazon's Opposition have identifying information and evaluation information about specific

Amazon employees, which is highly personal and considered confidential within Amazon. *See* Roach Decl. ¶ 9. Exhibits A and O, the Opposition and the K. Trefz Declaration also contain confidential information about Amazon’s internal data structure, as well as the parties’ discovery negotiations. *See id.* Disclosing this confidential information is unnecessary and only risks providing Amazon’s competitors with information they could not otherwise access. And Exhibits C and J reveal confidential information about state and foreign government investigations and communications with Amazon. *See* Roach Decl. ¶ 10.

This Court and those in this Circuit routinely seal similar documents. *See, e.g., Davis v. Symetra Life Ins. Co.*, 2024 WL 1299616, at *3 (W.D. Wash. Mar. 27, 2024) (sealing confidential and proprietary business information); *Mahone v. Amazon.com, Inc.*, 2024 WL 965139, at *2 (W.D. Wash. Mar. 6, 2024) (sealing “confidential performance evaluation information for current non-party Amazon employees”); *Floyd v. Amazon.com Inc.*, 2024 WL 1533217, at *1 (W.D. Wash. Apr. 9, 2024) (sealing information regarding “internal systems and processes for protecting data”); *In re Qualcomm Litig.*, 2018 WL 3831288, at *1 (S.D. Cal. Aug. 13, 2018) (sealing “confidential business information with respect to the company’s . . . internal organization”); *Barnes v. Hershey Co.*, 2015 WL 1814293, at *2 (N.D. Cal. Apr. 21, 2015) (sealing information related to defendant’s “organization structure”); *Clark v. Metro. Life Ins. Co.*, 2010 WL 1006823, at *1 (D. Nev. Mar. 16, 2010) (sealing information reflecting defendant’s “confidential internal business deliberations, organization, and capabilities”). In line with these considerations, and pursuant to the good cause shown by Amazon, this Court should order permanently sealed the exhibits and briefing here addressed.

CONCLUSION

Amazon respectfully requests that the Court grant Amazon’s Motion to Seal and order that the above-described documents be filed under seal or redacted.

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1 DATED this 10th day of December, 2024.

2 *I certify that this memorandum contains 2,038*
3 *words, in compliance with the Local Civil Rules.*

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